

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 9257 OF 2016**

Mr. Shrinand Mukund Patwardhan
versus
The State of Maharashtra and ors.

....Petitioner

...Respondents

Mr. Ashutosh A. Kumbhakoni, senior counsel with Mr. Avinash Hari Fatangare, advocate for the petitioner.

Mr. A. B. Vagyani, Government Pleader along with Ms.M. P. Thakur, AGP for respondent Nos. 1 to 3.

Mr. S. V. Gavand, advocate for respondent No.4.

Mr. S. B. Shetye, advocate for respondent No.5.

**CORAM : RANJIT MORE &
ANUJA PRABHUDESSAI, JJ.**

DATE : 23rd AUGUST, 2016.

P. C. :

Heard Mr. Kumbhakoni, learned senior counsel for the petitioner, Mr. Vagyani, learned GP for the State, Mr. Gavand, learned counsel for respondent No.4 and Mr. Shetye, learned counsel for respondent No.5.

2. Rule. Rule is made returnable forthwith and, by consent, the petition is heard finally.

3. By this petition under Article 226 of the Constitution of India, the petitioner seeks direction to the State Government to take decision in respect of declaration of a larger urban area of the Municipal Corporation of the City of Panvel as intended in the draft notification dated 16th May, 2016 and further direction to the State Government to issue a final notification for establishment of the larger urban area of the Municipal Corporation of the City of Panvel.

4. One Mr.Sudhakar Namdevrao Shinde, Deputy Secretary, UDD, has filed an affidavit dated 23rd August, 2016, on behalf of the State of Maharashtra. It is stated in the affidavit that the process to constitute the Panvel Municipal Corporation has started prior to the directions from the State Election Commission dated 4th February, 2016. However, the Government could not issue the final notification to constitute the Panvel Municipal Corporation because of the directions of the State Election Commission dated 4th February, 2016. It is also stated that though the State Government desires to, it is not in a position to issue final notification for the constitution of Panvel Municipal Council and adjoining areas.

5. Mr. Shetye, learned counsel for respondent No.5-the State Election Commission placed on record the copy of the order dated

27th January, 2005 as well as copies of letters dated 19th January, 2016, 4th February, 2016, 10th June, 2016 and 18th August, 2016. Relying upon these letters, Mr. Shetye stated that time and again, the Government was informed that the decision regarding change of boundary and expansion of area of the council/local bodies should be taken in advance i.e. prior to six months before the expiry of the term of the respective local body and, despite this, the Government has not done anything. He submitted that the term of Panvel Municipal Council is due to expire on 22nd December, 2016, and therefore, in discharge of the Constitutional obligation, the Election Commission has started the process of election of new body in June-2016 and as of today, formation of wards is completed. He submitted that the elections to the Panchayat Samities and Zilla Parishad are to be held in February-2017 and, therefore, the process in this regard has started on 18th August, 2016.

6. Mr. Vagyani, learned GP submitted that the State could not have taken final decision without considering the suggestions to the draft notification and the Divisional Commissioner submitted report in this regard on 13th July, 2016. However, in view of the letter dated 10th June, 2016 of the Election Commission directing the Government not to take decision regarding the change of boundaries of the local bodies, the Government is unable to do anything.

7. The affidavit filed on behalf of the Government indicates that the Government is desirous to constitute Panvel Municipal Corporation. However, they are not in position to issue final notification in view of the directions of the Election Commission contained in the letter dated 4th February, 2016. In the said letter, the Election Commission refers to ensuing elections to local bodies and requested the Government that the change of boundaries of Nagar Parishad/ Nagar Panchyats as well as Zilla Parishads, Panchayat Samities and Municipal Corporation should not be done after 1st June, 2016 and 1st September, 2016 respectively.

8. Needless to note that the State Election Commission is a Constitutional Authority and is entrusted with conduct of elections to Corporation, Municipal Councils, Village Panchayats, Panchayat Samities and Zilla Parishads. The Election Commission is also obliged to start the election process well in advance. In view of this mandate and since the period of Panvel Municipal Council is due to expire on 22nd December, 2016, the Election Commission started the election process in the month of June, 2016, and the wards are already formed. In our considered view, the Election Commission in order to save public time and money, was justified in requesting the concerned authority to take decision regarding change of boundaries of the local bodies well in advance. As

regards change of boundaries of local bodies as well as formation of Municipal Councils and Corporations, it was for the Government to decision in this regard well in advance, before the expiry of the term of the particular Municipal Council or Municipal Corporation etc.. We hope and trust that in future the Government will consider the above aspect and take appropriate decision well in time.

9. As stated above, the affidavit filed on behalf of the Government indicates that the decision is already taken regarding constitution of Panvel Municipal Corporation. However, the Government has not taken any decision to issue final notification in this regard because the time as stipulated by the Election Commission is already over. In our opinion, in the event, if the Election Commission proceeds further and holds the elections to Panvel Municipal Council and, thereafter, the Government issues final notification for the constitution of the Panvel Municipal Corporation, the exercise undertaken by the Election Commission would be rendered futile. In addition to this, public time and public money would also be wasted.

10. We, therefore, called upon Mr. Shetye, learned counsel for respondent No.5-the State Election Commission to make his stand clear regarding issuance of the notification of the Panvel Municipal

Corporation by the State Government. He submitted that it is for the Government to issue the notification. He also agreed that if the notification regarding Panvel Municipal Corporation is issued subsequent to the completion of election process to the Panvel Municipal Council, then, it would result in wastage of public time and public money and the Election Commission would be obliged to again hold elections to the Panvel Municipal Council.

11. Considering the stand of the Election Commission and the stand of the Government and public interest at large, we direct the Government - respondent No.1 to take final decision regarding constitution of the Panvel Municipal Corporation. The Government shall take decision as expeditiously as possible and, in any case, within a period of one week from today and complete the formalities, if any, thereafter within a period of two weeks. The writ petition is, accordingly, disposed of.

12. All concerned to act upon a copy of this order duly authenticated by the Registry of this Court.

(ANUJA PRABHUDESSAI, J.)

[RANJIT MORE, J.]